IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

CRL.A.No. 960 of 1998(C)

AGAINST THE JUDGMENT DT.16.11.98 IN SC.50/1997 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR .

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APPELLANT/ ACCUSED

JOY, S/O. VADAYIL JOSE,
NADUVARKKAD DESOM,
VALLIVATTOM VILLAGE,
KONATHUKUNNU (VIA),
TRICHUR DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS/ COMPLAINANT

STATE OF KERALA (CIRCLE INSPECTOR OF POLICE, IRINJALAKUDA POLICE STATION, CRIME NO.326/96), REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.960 OF 1998

Dated 24th January, 2006

JUDGMENT

Appellant/accused was convicted for offences punishable under Section 354 of the Indian Penal Code and Section 3(i)(xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was sentenced to undergo rigorous imprisonment for four years under Section 3 (i)(xi) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act and no separate sentence was awarded under section 354 of IPC. According to the prosecution, CW1 Surendran and PW4 Usha are husband and wife. PW5 and PW8 are their children. They belong to the Vettuva community, a scheduled caste, as can be seen from Ext.P1 certificate issued by PW1 Tahsildar. The accused is a very close friend of CW1. They were co-workers and intimate friends. The accused used to come to the house of CW1 and PW4 frequently and he was well known to the children also. He was like a member of their family. 4th September, 1996 was a holiday for the children. Since it was a working day for CW1 and PW4, they went for work. At about 2.30 p.m. the accused came to the house of CW1 and sat on the cot which was there in the room. He called PW5 to the room and requested PW5 to

hold his male organ in her hand. Since PW5 refused various requests of the accused, he made the child lie on her back on the cot and misbehaved with the girl until he was ejaculated. At that time, PW8 came to the room and saw the above and the children cried. Then the accused went through the kitchen door. When PW4 returned after her work, the children were crying. After enquiries, PW4 washed the child and changed her clothes. When CW1 returned, he was informed about the same. Accused and CW1 were very close friends. CW1 did not reveal the same immediately, but, he mentioned the matter to the father of the accused. When the accused got information that complaint was made to his father, not only denied the same but also stated that they are making false accusation. CW1 did not inform the police because they wanted that others should not know the same. Later, when the father of the accused quarrelled on this issue, the matter became known to public. The child complained pain also. Therefore, they decided to take the child to hospital. The child was admitted in the hospital and the doctor informed the police. The investigation revealed that rape was not committed. The dress worn by the child as well as lunki of the accused also did not contain semen as per chemical examination report. From the totality of the evidence, the

Special Judge sentenced the accused for the offences charged. Paragraph 16 of the judgment shows that police filed the charge sheet before the Special Court constituted under Section 14 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. As held by the Apex Court in **Gangula Ashok** v. **State of Andhra Pradesh** (AIR 2000 S.C. 740), the Special Court cannot take cognizance of any offence without case being committed to that court. Hence conviction for the above offence is set aside. Here also there is no case that accused committed the offence merely because victim was a scheduled caste.

2. The next question is regarding the offence under section 354 of the Indian Penal Code. On going through the evidence of PWs 5 and 8, though child witnesses, I agree with the findings of the learned Sessions Judge that the offence under section 354 IPC was proved. A reading of depositions of PWs 5 and 8 would show that they are trustworthy. PW5 is the victim and PW8 is her elder sister who saw the later part of the incident. PW4 narrated the incident as per the prosecution case. According to PW8, elder sister, they were playing in the courtyard. Since PW5 was not found, when she entered the room she found the accused lying over PW5. PW8 is a girl

aged about 13 years at the time of examination. She felt embarrassed and therefore she stepped out of the room. She must have been aged about 12 years on the date of alleged occurrence. When she entered the room again, she found the accused getting up from the cot fixing his dothy, and going out of the room. Evidence of PW5 and PW8 are further corroborated by PW4 mother. Evidence of PWs 5 and 8 are fully corroborated by PW4 mother. Evidence of PW5 is supported by the version given by her to PW6. PW7 doctor who examined potency in Ext.P7 certified that accused is potent. According to PW7, accused told him that it is PW5 who caught his organs, but, he chased her away. Even according to their evidence as well as 313 statement of the accused, CW1 and the accused were close friends. He has all the freedom to come to the house and there is no reason to believe that PWs 5 and 8 had given false evidence. Delay in filing F.I.R. is sufficiently explained. Admittedly, there was no evidence to prove that rape was committed, but, he has committed the offence under section 354 IPC. Therefore, the conviction for offence under section 354 IPC is confirmed. It is submitted that the accused was under custody for about a month. It is also submitted that now the relationship between the accused as well as the family of CW1 is cordial. Whatever may be that, he has committed

the offence under section 354 IPC and I am of the opinion that he should be sentenced with a fine of Rs.15,000/= apart from the imprisonment he has already suffered and I do so. On realization of the amount, Rs.10,000/- shall be given to PW5. In default of payment of fine, he shall undergo imprisonment for three months.

The appeal is partly allowed.

J.B.KOSHY
Judge

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